



**International Covenant
on Civil and
Political Rights**

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15 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (CLOSED)** OF THE 1062nd MEETING

Held at Headquarters, New York,
on Thursday, 11 April 1991 at 3 p.m.

Chairman: Mr. POCAR

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Consideration of communications under the Optional Protocol to the Covenant
(continued)

* All persons handling this document are requested to respect and observe its confidential nature.

** The summary record of the second part (public) of the meeting appears as document CCPR/C/SR.1062/Add.1.

N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committee will be issued shortly after the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT
(continued)

Communications Nos. 221/1987 and 323/1988 (CCPR/C/WG/41/DR/221/1987 and 323/1988)

1. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group, said that the authors were French citizens who claimed to be victims of violations of articles 14, 19, 26 and 27 of the Covenant. They had been charged with vandalizing road signs but had been prevented from using the Breton language, their mother tongue, before the Tribunal because they were also proficient in French. They claimed that their rights under article 14 (1) and 14 (3) (e) and (3) (f) had been violated. The authors maintained that they should have been allowed to use the Breton language in court and provided with interpreters. The French criminal code did not prohibit the use of Breton in court, and they cited examples in paragraph 3.2 of the document. They also claimed discrimination on grounds of language under articles 2 and 26, and of minority rights under article 27.
2. The State party had observed that domestic remedies had not been exhausted, and in relation to article 14 that the authors were perfectly capable of using French and had not requested the services of an interpreter.
3. The authors claimed that the notion of a fair trial within the meaning of article 14 implied that the accused should be allowed to express himself in the language in which he normally expressed himself, and denial of an interpreter constituted a violation of article 14 (3) (e) and (3) (f). The Working Group had observed that article 14 was concerned with procedural equality and the principle of equality of arms in criminal proceedings. On that basis, the French courts had complied with their obligations under article 14, (1) and 14 (3) (e) and (3) (f). French law did not give everyone the right to speak his own language in court, and, as the authors were capable of speaking French, they had suffered no discrimination on grounds of language under article 26. She recommended that the Committee adopt the findings recommended by the Working Group, as contained in paragraph 6 of the draft views, that no violation of any of the provisions of the Covenant had occurred.
4. Mr. WENNERGREN, referring to paragraph 5.6 of the draft views, suggested that for purposes of consistency the wording of the last sentence be changed to "... are the services of an interpreter mandatory". The last sentence of paragraph 5.7 implied that the court should make an inquiry into the linguistic competence of the accused, but it was the responsibility of the parties to request an interpreter if they were not sufficiently proficient in the language of the court. He recommended that the words "to ascertain" in the last sentence of paragraph 5.7 should be replaced by "to take into account".

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5. Mr. LALLAH requested that the word "defence" in the last sentence of paragraph 5.6 be deleted.
6. Mr. ANDO wondered whether the last sentence of paragraph 5.8 referred to the first sentence of article 14.
7. Mrs. HIGGINS, replied that the sentence referred to allegations that in a few cases, some Bretons had been provided with interpreters. The State had been more generous than required, but such action did not constitute discrimination against others. She accepted the substance of Mr. Wennergren's and Mr. Lallah's suggestions on the drafting of paragraphs 5.6 and 5.7.
8. Mr. ANDO asked whether specific reference could be made to interpreters in regard to article 14 (3) (f).
9. Mr. MAVROMMATIS said that the last sentence of paragraph 5.8 should make specific reference to interpreters in order to encourage States to provide interpretation in more cases where linguistic difficulties might exist.
10. Mr. DIMITRIJEVIC said that the last sentence of paragraph 5.8, if read in isolation without reference to paragraph 4.5, could be confusing. The issue that some Bretons had received a benefit not afforded to others was secondary, and he was concerned that the matter would be given undue importance. He suggested that the final sentence be deleted.
11. Mrs. HIGGINS agreed that the argument should not be overinflated, but the only relevant aspect of article 26 would not be addressed if that sentence was deleted. A previous decision had established that if a benefit was given to some that was not required for all, an article 26 issue could arise. Her instinct was to leave the sentence as it stood, while making specific reference to article 14 (3) (f).
12. Mr. MYULLERSON said that upon further reading, paragraph 5.8, appeared unclear, and he felt it would be preferable to delete the final sentence altogether. It was not known why the individuals referred to had been provided with interpretation, and the subjective judgement of the court judges might have come into play. That did not constitute a violation of article 26.
13. Mr. DIMITRIJEVIC said that, in paragraph 4.5, it was the author's impression that in two cases, Bretons who spoke French had still been provided interpreters. His claim to discrimination under article 26 was based on language, not on the fact that some Bretons had been afforded privileges that he had not received. French law gave discretion to the judge in matters of language. It was possible that some Bretons did not, in fact, speak French well enough for court appearances, and those exceptions should not be made central to the decision. Under the Committee's jurisprudence, that was not a benefit established by law, but by the judge's discretion. It was an unimportant matter and could give rise to confusion, therefore, the sentence should be deleted.

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14. Mrs. HIGGINS thanked Mr. Dimitrijevic for highlighting the fact that Committee jurisprudence covered a benefit provided by law, and said that she could accept his argument.

15. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft views recommended by the Working Group, subject to the amendment proposed to paragraphs 5.6, 5.7 and 5.8.

16. It was so decided.

Communication No. 327/1988 (CCPR/C/WG/41/DR/327/1988)

17. Mrs. HIGGINS said that the author was a French citizen who also had been denied the use of the Breton language in court after being arrested for defacing road signs. He also claimed violation of his rights under articles 2, 14, 19, 26 and 27 of the Covenant. The arguments put forward by the author and by the State party were identical to those in the previous communications. She suggested that a statement be inserted between paragraphs 5.2 and 5.3 of the draft views to the effect that no issue had been found under article 19. The language of paragraphs 5.5 and 5.6 should be changed to match the changes made in the previous communications.

18. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft views recommended by the Working Group, subject to the drafting amendments proposed by Mrs. Higgins.

19. It was so decided.

Communication No. 313/1988 (CCPR/C/WG/41/DR/313/1988)

20. Mrs. HIGGINS, speaking as Special Rapporteur for New Communications, said that the author, a Jamaican citizen currently awaiting execution having been convicted of murder, maintained that he was innocent. He alleged that the State party had violated articles 7, 10 and 14 of the Covenant because he had been physically maltreated upon arrest and had not been placed on identification parade; the legal aid attorney assigned to his case had made an inadequate defence; the prosecution witness had not been cross-examined and no witnesses had been called in his defence; and he had not been able to meet with the legal aid attorney assigned to him for the appeal.

21. The author's counsel had recently confirmed that preparations for an appeal to the Privy Council were well advanced and that she expected to be able to file the requisite petition very shortly.

22. The State party contended that the author had not exhausted domestic remedies.

23. In the draft views, the Working Group had concurred that the requirement of the Optional Protocol on exhaustion of all available domestic remedies had

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(Mrs. Higgins)

not been met in respect of any of the articles invoked. The Working Group was consequently recommending that the Committee should decide that the communication was inadmissible since the claim did not meet that requirement but that at the same time it should request the State party to ensure that all necessary documents be made available without further delay so as to permit an effective recourse to the Privy Council and further request the State party, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he had had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review its decision, if he were to do so once the reasons for inadmissibility no longer applied.

24. Mr. MAVROMMATIS said that he fully supported the proposed decision in paragraph 6 to declare the communication inadmissible, but wished to emphasize that he was agreeing only on an exceptional basis, that, after the finding of inadmissibility, the Committee should proceed in paragraph 6 (c) to make the request under rule 86.

25. The CHAIRMAN observed that such a request had been made in several analogous cases.

26. Mr. WENNERGREN suggested that the Committee's explanation of the author's non-exhaustion of local remedies should be made more specific in paragraph 5.4 of the draft views.

27. Mrs. HIGGINS proposed accordingly that the first sentence of paragraph 5.4 should be amended to read: "With regard to the author's allegations under articles 7 and 10 of the Covenant, concerning torture and beatings during his detention, the Committee notes that although a legal aid lawyer had been assigned to him, his submissions to the Committee do not show that the author complained to the competent authorities about these events, etc.".

28. Mr. LALLAH said that since the Committee was not prepared to consider the case on the merits, he did not see why it should pronounce on the merits as it did in paragraphs 5.3 and 5.4 of the draft views.

29. Mrs. HIGGINS said that Mr. Lallah's point was well taken and that paragraph 5.3 regarding the State party's obligation to provide proper legal assistance in capital cases under article 14 (3) (d) of the Covenant could be deleted. Paragraph 5.4 must be retained, however, for it indicated that the author must exhaust local remedies on the claims under articles 7 and 10 as well.

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30. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the decision on admissibility recommended by the Working Group, subject to the deletion and drafting amendment proposed.

31. It was so decided.

The closed meeting rose at 4.15 p.m.



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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE
1062nd MEETING

Held at Headquarters, New York,
on Thursday, 11 April 1991, at 4.30 p.m.

Chairman: Mr. POCAR

CONTENTS

Action by the General Assembly at its forty-fifth session

- (a) Annual report submitted by the Human Rights Committee under
article 45 of the Covenant

* The summary record of the first part (closed) of the meeting appears
as document CCPR/C/SR.1062.

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this session will be consolidated in a single corrigendum, to be issued
shortly after the end of the session.

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CONTENTS (continued)

- (b) Effective implementation of United Nations instruments on human rights and effective functioning of bodies established pursuant to such instruments

Submission of reports by States parties under article 40 of the Covenant

The public meeting was called to order at 4.30 p.m.

ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION

- (a) ANNUAL REPORT SUBMITTED BY THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 45 OF THE COVENANT
- (b) EFFECTIVE IMPLEMENTATION OF UNITED NATIONS INSTRUMENTS ON HUMAN RIGHTS AND EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO SUCH INSTRUMENTS

1. Mr. ANDO, Rapporteur, referring to General Assembly action on the effective implementation of United Nations human rights instruments and effective functioning of human rights bodies, reviewed the provisions of General Assembly resolutions 45/85, 45/135 and 45/155 and drew particular attention to the latter concerning the World Conference on Human Rights which was to be convened in 1993. The Committee must decide how best to constructively contribute to the World Conference and especially the preparations thereof.

2. The CHAIRMAN said that the immediate task before the Committee was to make suggestions regarding the agenda for the Conference. The Preparatory Committee for the World Conference would be meeting from 9 to 13 September and there would be time at the Committee's own July session to expand on the substance of its recommendations, which should be within the framework of the objectives of the World Conference outlined in resolution 45/155, paragraph 1. With regard in particular to paragraphs 1 (e) and (f), the Committee should stress in its agenda proposals that monitoring procedures, which included the activities of the treaty bodies, needed strengthening. The Committee should ensure that its activities were reflected in both the preparatory phase and the Conference itself, and do so in such a way that the Committee emerged strengthened from the Conference rather than with its effectiveness reduced.

3. Mr. EL-SHAPEI said that the Committee had been asked to consider two topics: (1) its possible contributions to the agenda of the World Conference on Human Rights, and (2) its involvement in the Conference itself. The objectives of the Conference had been set forth very clearly in paragraph 1 of General Assembly resolution 45/155, and any proposed agenda items should be closely related thereto. During its next session, the Committee might wish to devote one or two meetings to an exchange of views on proposed agenda items and on the specific role to be played by the Committee at the Conference; it could then submit a report on those views to the Preparatory Committee. The conclusions and recommendations of the report which had already been produced by the chairpersons of treaty bodies could also be submitted to the Preparatory Committee. Noting that paragraph 9 of resolution 45/155 referred specifically to the participation of members of human rights expert bodies in the work of the Preparatory Committee, he asked the Chairman whether he had any ideas on such participation.

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4. Mr. WENNERGREN said that usefulness of the Conference would depend on the selection of agenda items that would serve to promote human rights on a practical level for the benefit of the world's 5 billion inhabitants. In his view, the most basic human right, and the object of greatest concern, was the right to liberty and security of person. If the Committee and the Conference could promote conditions under which universal respect for that right could eventually be achieved, that contribution would represent a great step forward in the history of humanity. A working plan for a comprehensive discussion of that particular human right should therefore be elaborated. It befitted the Committee to recommend such an agenda item and to do its utmost to strengthen the impact and enhance the constructiveness of the Conference.

5. Mr. PRADO VALLEJO said that because of its broad range of concerns and diversity of opinions, the Committee was not currently in a position to establish a concrete plan of action on the matter. It would be preferable to refer the question to the working group on article 40 of the Covenant. The working group could then present its views and recommendations regarding the Conference at the July session, at which time the Committee would be in a better position to take the necessary decisions.

6. Mr. SADI, while agreeing that the Committee could only make general comments about the Conference at the current stage, said that he had already identified three areas of discussion which he thought should be highlighted at the Conference: (1) the organic link between parliamentary democracy and human rights; (2) the close relationship between economic development and human rights; and (3) the need to promote ratification of the Covenant and of the Optional Protocol to the Covenant among countries which were not yet parties to those instruments, and to impress upon Governments which were already parties thereto the necessity of taking their obligations seriously.

7. The CHAIRMAN suggested that he should be authorized to submit the ideas expressed by the Committee members to the Under-Secretary-General responsible for preparing the agenda of the Preparatory Committee. In addition, he suggested that he should propose the inclusion of an item concerning possible means of strengthening the effectiveness of monitoring procedures of treaty bodies, including their financial aspects. Finally, he suggested that one or two meetings during the Committee's July 1991 session should be devoted to a full discussion of the issues that should be raised at the Conference, so that he would be prepared to present the Committee's conclusions and recommendations to the Preparatory Committee in September 1991.

8. It was so decided.

9. Mr. MAVROMMATIS noted that during the most recent session of the General Assembly, action in respect of the Human Rights Committee's work had been taken not only in the Third Committee, but also in the Fifth Committee, and expressed concern about the continued availability of Headquarters facilities to the Human Rights Committee.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

10. The CHAIRMAN drew attention to a list of countries which had submitted their periodic reports and of countries whose periodic reports were overdue. During the Committee's current session, contacts had been established with the Permanent Missions of 20 States whose reports were overdue to ensure that the issue would be brought to the attention of the Governments concerned. However, it had not been possible to establish contacts with the representatives of 14 other States whose reports were overdue.

11. He also noted that although the Committee had considered the second periodic reports of India and Panama at its current session, the third periodic reports of those States were already overdue. In accordance with past practice, he suggested that India and Panama should be given one more year (until 31 March 1992) to submit their third periodic reports.

12. It was so decided.

13. Mr. PRADO VALLEJO noted that according to the list of reports, the third periodic report of Iraq was more than one year overdue. Although periodic reports were normally required every five years, article 40, paragraph 1 (b) of the Covenant authorized the Committee to request reports from States parties at any time. That provision had been included in the Covenant to cover cases in which extreme circumstances were seriously affecting human rights; to date, the Committee had never felt it necessary to exercise its authority under that provision. However, Committee members could not close their eyes to the extreme violence, which amounted to attempted genocide, being perpetrated in Iraq. The Committee should therefore request, under article 40, paragraph 1 (b) of the Covenant, an immediate report from Iraq on the current human rights situation in its territory, which it could consider at its forthcoming session in July 1991.

14. Mr. MAVROMMATIS, while agreeing that an immediate report from Iraq was necessary, said that the Committee should request the submission of an updated version of the overdue report, rather than a separate special report.

15. Mr. LALLAH said that he wondered whether the Committee should make it clear that the report should include information on the territory that might for a brief period have been considered part of Iraq.

16. Mr. AGUILAR said that the time had come for the Committee to avail itself of article 40, paragraph 1 (b) of the Covenant. Although the Committee could reiterate its request for Iraq's regular periodic report, it should also request a special report under article 40, paragraph 1 (b) to underscore its deep concern about the situation.

17. Mr. WENNERGREN said it was unrealistic to expect Iraq to complete a report on its compliance with all the provisions of the Covenant by the Committee's July session. Since the right to liberty and security of person

(Mr. Wennergren)

was of paramount importance in light of the current situation in Iraq, the Committee should confine itself to requesting information on compliance with that provision of the Covenant.

18. The CHAIRMAN suggested that, in its request, the Committee should take into consideration recent events affecting the situation of human rights under the International Covenant on Civil and Political Rights, request the Government of Iraq to submit its third periodic report without any further delay in order that it might be considered at the next session of the Committee in July 1991, and further request that the report should contain detailed information about the impact of the aforesaid events on the rights protected under the relevant articles of the Covenant.

19. Mrs. HIGGINS fully supported the proposal introduced by Mr. Prado Vallejo. The Committee's duties under the Covenant were all the more important as other United Nations bodies had stated that their ability to take action with regard to human rights in Iraq was restricted. It was immaterial whether the Committee called for a special report or for the regular report which was already overdue. However, if the Committee was to consider the Iraqi report in July 1991, it should decide whether it wished to address the general concerns raised by the State party's previous report or the current anxieties regarding the situation of religious and ethnic minorities. In the latter case, the Committee's request would have to be specific. Furthermore, if information was requested concerning a wide range of issues, it was possible that no report at all would be forthcoming.

20. She had difficulty with the phrase "aforesaid events", as the State party might reply that, since it had been invaded, it could not guarantee any human rights. She would prefer a specific request for a report on matters arising under articles 6, 7, 9 and 27 of the Covenant, with special reference to the situation of ethnic and religious minorities.

21. She did not feel that the request should contain a reference to Kuwait under Iraqi occupation for it would be wrong to imply that Kuwait had been under Iraqi jurisdiction at any time.

22. Mr. MYULLERSON, supporting the proposal made by Mr. Prado Vallejo, said that the Committee should explicitly request information concerning not only the impact of recent events, but also of current events, as grave human rights violations were occurring in Iraq even as he spoke.

23. Ms. CHANET said that she, too, supported the proposal. She agreed with Mrs. Higgins with regard to the disadvantage of referring to "aforesaid events" and the inappropriateness of any reference to Kuwait. With regard to Mrs. Higgins' suggestion that specific articles of the Covenant should be mentioned, she felt that the State party should not be given an excuse to concentrate on selected provisions while ignoring others.

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24. Mr. AGUILAR said that he supported the suggestion made by Mrs. Higgins and Mr. Wennergren with regard to mentioning specific articles of the Covenant. Members of the Committee should have some latitude to raise questions on the subject of Kuwait, since Kuwait had indeed been under the de facto jurisdiction of Iraqi troops at one time.

25. Mr. DIMITRIJEVIC said that, if the Committee adopted the formula put forward by the Chairman it would be precluded from asking the State party to concentrate on vital provisions of the Covenant. It was highly improbable that any report would be submitted on time. Accordingly, the Committee should remind Iraq that its third periodic report was overdue, and insist upon receiving a special report on the implementation of articles 6, 7, 9 and 27 before its July session. He agreed that members of the Committee should not be precluded from putting questions to the State party on the subject of Kuwait, but felt that there should be no reference in the Committee's report which might give the appearance of legitimizing the Iraqi occupation of Kuwait.

26. The CHAIRMAN asked whether Mr. Dimitrijevic could put his suggestion in writing.

27. Mr. MAVROMMATIS said that there were three drawbacks to requesting a special report dealing with specific articles. First, the Committee would also have to ask for the regular report, so that it would not be deemed to have absolved the State party of its obligation in that regard. Secondly, the articles mentioned had not included article 1, which in his view was the most important of all, since it was from the denial of the right to self-determination that all the other human rights violations arose. Thirdly, by requesting a special report, the Committee incurred the risk of receiving no report at all. He therefore suggested that the draft decision should request the State party to submit its already overdue periodic report and to concentrate in particular on specific articles.

28. Mr. WENNERGREN suggested that the second part of the draft decision, after the words "at its next session in July 1991", should be amended as follows: "The Committee will be ready to accept a summary report that may be further developed at meetings in July. The Committee further requests that the report should contain information about the impact of events on the rights protected under the relevant articles of the Covenant, particularly articles 6, 7, 9 and 27". That, he hoped, would be an acceptable compromise.

29. Mr. PRADO VALLEJO said that, with minor changes, the draft decision proposed by the Chairman could be the basis of a consensus. He suggested that the first clause should remain unchanged, but that the second clause should read as follows: "further requests that the report should contain detailed information concerning the situation of human rights protected by the Covenant, and especially those guaranteed by articles 6, 7, 9 and 27 of the Covenant".

(Mr. Prado Vallejo)

30. If Iraq did not respond to that request by July 1991, the Committee should decide, nevertheless, to consider the situation concerning Iraq's implementation of the Covenant on the basis of the materials available.

31. Mr. HERNDL said that the Committee should request a special report on the current situation in Iraq, because the third periodic report would not cover the period for which the Committee was seeking information. The draft decision could be worded more forcefully, as follows: "further decides to request the Government of Iraq to submit information, in particular, on the extent to which articles 6, 7, 9 and 27 of the Covenant are currently protected".

32. Mrs. HIGGINS suggested that the proposal made by Mr. Dimitrijevic should be amended so that, after the words "at its next session in July 1991", it would read: "and in any event, to submit by June 1991 its report, in summary form, if necessary, as it relates to the application at the present time to all of its citizens of articles 6, 7, 9 and 27 of the Covenant".

33. Mr. AGUILAR said that he had doubts concerning the phrase "all of its citizens" and wondered whether it would be possible to say "all persons under its jurisdiction".

34. Ms. CHANET agreed with Mr. Aguilar's point, as most of the persons whose human rights were being violated in Iraq did not have Iraqi citizenship. She felt that Mr. Herndl's formulation would be preferable.

35. Mr. DIMITRIJEVIC said that he supported Mrs. Higgins' formulation, provided that the word "citizens" was not used. He also questioned the need for the words "in summary form, if necessary", as that might enable the State party to submit a very sketchy reply.

36. Mr. PRADO VALLEJO said that he agreed with the point just made by Mr. Dimitrijevic.

37. Mr. WENNERGREN said that what the State party put in writing was immaterial; the main thing was that its representatives should appear before the Committee in order to answer questions.

38. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the following decision:

"The Human Rights Committee,

"Noting that the third periodic report of Iraq was due for submission to the Committee on 4 April 1990;

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(The Chairman)

"Taking into consideration recent and current events in Iraq affecting the situation of human rights under the International Covenant on Civil and Political Rights;

"Acting under article 40, paragraph 1 (b) of that Covenant;

"1. Decides to request the Government of Iraq to submit its third periodic report without further delay to be discussed by the Committee at its forty-second session in July 1991 and, in any event, to submit by 15 June 1991 its report, in summary form if necessary, as it relates in particular to the application at the present time of articles 6, 7, 9 and 27 of the Covenant;

"2. Requests the Secretary-General to bring this decision to the attention of the Government of Iraq".

39. It was so decided.

The meeting rose at 6.10 p.m.